IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 56 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINUBHAI A PATEL

Versus

HASMUKH AMRITLAL SHAH

Appearance:

MR ARUN H MEHTA for Petitioner No. 1-2

MR AD DESAI for Respondent No. 1

MR KL PANDYA AGP for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/07/2001

ORAL JUDGEMENT

Heard Mr. A.H.Mehta learned advocate for the petitioners.

2. Rule. Mr. A.D.Desai learned advocate waives

service of rule on behalf of respondent no.1 and Mr. K.L. Pandya learned AGP waives services of rule on behalf of respondent no.2.

3. The petitioners have challenged the order dated 28.12.1998 passed by learned City Civil Judge, Court No.19, Ahmedabad below Exh.376 in the proceedings of Civil Suit No. 657 of 1981.

4. Vide impugned order, the Trial Court has rejected the application of the present petitioners to implead proposed party as party - defendants.

5. The respondent no.1 has filed suit against the petitioners as well as respondent no.2 to claim damages on account of negligence while performing operation. That pending the suit, the defendants/petitioners moved application Exh.376 to implead the Insurance Companies who have indemnified the petitioner nos. 1 and 2 respectively in the event of claim made against them for professional negligence. That the said application though was not resisted by any party and without issuing a notice to proposed party, appears to have been rejected on two grounds: It is held that suit is pending since very long time and thereby, impleading a party would obstruct the further prosecution and second ground assigned is that proposed parties are not necessary parties.

6. In the facts and circumstances of the case, it is difficult to comprehend the reasons assigned by the Trial Court as averments made in the application itself make it clear that the Insurance Companies who have indemnified the original defendant of the suit is necessary party and as such order being erroneous, interference of revisional court is warranted and the Trial Court shall have to issue notice to the proposed party so as to ascertain the factual aspects and decide the application in accordance with law.

7. In view of the above stated facts, present civil revision application is allowed. The impugned order dated 28.12.1998 passed by learned City Civil Judge, Court No.19, Ahmedabad below Exh.376 in the proceedings of Civil Suit No. 657 of 1981 is hereby quashed and set aside. The matter is remanded back to the City Civil Court, Ahmedabad with a direction that Trial Court shall hear the application Exh.376 de-novo by issuing the notice to the proposed party and decide the same in accordance with law.

8. At this stage, it is stated at bar on behalf of respondent no.1 that proceedings of Civil Suit No. 657 of 1981 is dismissed for default.

Under the circumstances, it is clarified that above stated order shall come into force in the event of restoration of proceedings of Civil Suit No. 657 of 1981 on file.

Rule to that extent is made absolute with no order as to costs.

(A.K.Trivedi,J.)

(vipul)